

AMENDED IN SENATE APRIL 24, 2006

AMENDED IN SENATE APRIL 18, 2006

AMENDED IN SENATE MARCH 13, 2006

SENATE BILL

No. 1272

**Introduced by Senator Bowen
(Principal coauthor: Senator Alquist)**

February 9, 2006

An act to amend Sections 4717, 4800, and 4803 of the Probate Code, relating to advance health care directives.

LEGISLATIVE COUNSEL'S DIGEST

SB 1272, as amended, Bowen. Advance health care directives.

(1) Existing law establishes the Advance Health Care Directive Registry allowing individuals to register a written advance health care directive with the Secretary of State. The information in the registry is accessible by specified entities, upon request.

This bill would require the Secretary of State, on or before January 1, 2008, to establish an Advance Health Care Directive Web site that would permit an individual to register with the registry online, as specified, and would permit a health care provider to request information from the registry online. The bill would require the Secretary of State to establish the Web site by using existing resources. The bill would also require that the Advance Health Care Directive Registry Internet Web site and "Donate Life," the California Organ and Tissue Donor Registry Internet Web site, each have a direct link on its home page to the other's Internet Web site. The bill would make conforming changes in that regard to a related provision, and would modify provisions relating to the information that Secretary of

~~State may receive from a registrant to exclude a social security number or driver's license number declare the Legislature's intent to explore legislation that would transition registration in, and access to, the Advance Health Care Directive Registry from a paper-based system to an electronic, Web-based system, using the existing resources of the Secretary of State's office.~~

~~(2) Existing law provides that failure to register an advance health care directive does not affect the validity of that directive.~~

~~This bill would further provide that the registration of an advance health care directive with the Secretary of State does not affect the validity or certify the accuracy of that directive, or create a presumption of validity or accuracy.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~-no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. *It is the intent of the Legislature to explore*
 2 *legislation that would transition registration in, and access to,*
 3 *the Advance Health Care Directive Registry from a paper-based*
 4 *system to an electronic, Web-based system, using the existing*
 5 *resources of the office of the Secretary of the State.*

6 SECTION 1. Section 4717 of the Probate Code is amended to
 7 read:

8 4717. (a) ~~Notwithstanding any other provision of law, within~~
 9 24 hours of the arrival in the emergency department of a general
 10 acute care hospital of a patient who is unconscious or otherwise
 11 incapable of communication, the hospital shall make reasonable
 12 efforts to contact the patient's agent, surrogate, or a family
 13 member or other person the hospital reasonably believes has the
 14 authority to make health care decisions on behalf of the patient.
 15 A hospital shall be deemed to have made reasonable efforts, and
 16 to have discharged its duty under this section, if it does all of the
 17 following:

18 (1) Examines the personal effects, if any, accompanying the
 19 patient and any medical records regarding the patient in its
 20 possession, and reviews any verbal or written report made by
 21 emergency medical technicians or the police, to identify the
 22 name of any agent, surrogate, or a family member or other person

1 the hospital reasonably believes has the authority to make health
2 care decisions on behalf of the patient.

3 (2) ~~Contacts or attempts to contact any agent, surrogate, or a~~
4 ~~family member or other person the hospital reasonably believes~~
5 ~~has the authority to make health care decisions on behalf of the~~
6 ~~patient, as identified in paragraph (1).~~

7 (3) ~~Contacts the Secretary of State directly or indirectly,~~
8 ~~including by voice mail, facsimile, or via the Internet, to inquire~~
9 ~~whether the patient has registered an advance health care~~
10 ~~directive with the Advance Health Care Directive Registry, if the~~
11 ~~hospital finds evidence of the patient's Advance Health Care~~
12 ~~Directive Registry identification card either from the patient or~~
13 ~~from the patient's family or authorized agent.~~

14 (b) ~~The hospital shall document in the patient's medical record~~
15 ~~all efforts made to contact any agent, surrogate, or a family~~
16 ~~member or other person the hospital reasonably believes has the~~
17 ~~authority to make health care decisions on behalf of the patient.~~

18 (e) ~~Application of this section shall be suspended during any~~
19 ~~period in which the hospital implements its disaster and mass~~
20 ~~casualty program, or its fire and internal disaster program.~~

21 SEC. 2. Section 4800 of the Probate Code is amended to read:

22 4800. (a) ~~The Secretary of State shall establish a registry~~
23 ~~system through which a person who has executed a written~~
24 ~~advance health care directive may register in a central~~
25 ~~information center, information regarding the advance health~~
26 ~~care directive, and a copy of the advance health care directive.~~
27 ~~The Secretary of State shall make that information available upon~~
28 ~~request to any health care provider, the public guardian, or the~~
29 ~~legal representative of the registrant, but shall otherwise keep the~~
30 ~~information confidential. A request for information pursuant to~~
31 ~~this section shall state the need for the information.~~

32 (b) ~~The Secretary of State shall respond by the close of~~
33 ~~business on the next business day to a request for information~~
34 ~~made pursuant to Section 4717 by the emergency department of~~
35 ~~a general acute care hospital.~~

36 (e) ~~Information that the Secretary of State may receive is~~
37 ~~limited to the registrant's name, other individual identifying~~
38 ~~number established by law, excluding a social security number or~~
39 ~~driver's license number, if any, address, date and place of birth,~~
40 ~~the registrant's advance health care directive, an intended place~~

1 of deposit or safekeeping of a written advance health care
2 directive, and the name and telephone number of the agent and
3 any alternative agent. Information that may be released upon
4 request may not include the registrant's social security number or
5 driver's license number.

6 (d) ~~On or before January 1, 2008, the Secretary of State shall~~
7 ~~establish an Advance Health Care Directive Web site that allows~~
8 ~~an individual to register with the registry online. The Secretary of~~
9 ~~State shall establish the Web site by using existing resources. The~~
10 ~~Web site shall permit a health care provider, including an~~
11 ~~emergency department of a general acute care hospital, to access~~
12 ~~the registry online as provided in this subdivision. The Advance~~
13 ~~Health Care Directive Registry Internet Web site shall have a~~
14 ~~direct link to "Donate Life," the California Organ and Tissue~~
15 ~~Donor Registry Web site, on its home page. In addition, "Donate~~
16 ~~Life," the California Organ and Tissue Donor Registry Internet~~
17 ~~Web site shall have a direct link to the Advance Health Care~~
18 ~~Directive Registry Internet Web site.~~

19 (1) ~~The Secretary of State shall provide all of the following to~~
20 ~~individuals who wish to register using the Web site:~~

21 (A) ~~A secure Web site, which is accessible from a link on the~~
22 ~~Secretary of State's homepage.~~

23 (B) ~~An electronic registration form and an electronic advance~~
24 ~~health care directive form, which can be filled out online,~~
25 ~~submitted to the registry via the Web site, and that allows the~~
26 ~~user to print out a completed form. The form shall include a~~
27 ~~space for the person to indicate whether the form is being~~
28 ~~submitted as a new registration, an amendment to a prior~~
29 ~~registration, or a revocation of a prior registration. Failure to~~
30 ~~notify the Secretary of State of an amendment or revocation of an~~
31 ~~advance health care directive does not affect the validity of an~~
32 ~~amendment or revocation that is otherwise legally valid. A~~
33 ~~person submitting an advance health care directive shall ensure~~
34 ~~that any amendment or revocation of the directive is submitted~~
35 ~~promptly to the Secretary of State. A health care provider shall~~
36 ~~not be held liable for relying on a directive that has not been~~
37 ~~updated or has been revoked.~~

38 (C) ~~Instructions to the individual that all forms submitted~~
39 ~~electronically must be printed, signed and dated, and submitted to~~
40 ~~the Secretary of State by mail. The instructions shall also explain~~

1 that, pursuant to Section 4673, an advance health care directive
2 must also be witnessed by two individuals or notarized. The
3 instructions shall advise the individual to keep a copy of the
4 completed advance health care directive and to share it with
5 family members, health care providers, and legal representatives,
6 as the individual deems appropriate.

7 (2) Upon receipt of a form submitted via the Web site, the
8 Secretary of State shall create an electronic file in the registry
9 containing the information submitted and assign a unique file
10 number.

11 (3) Upon receipt of a form submitted in writing, the Secretary
12 of State shall do both of the following:

13 (A) Match the document with any existing file containing
14 information submitted by the individual via the Web site. If the
15 individual has not submitted a form via the Web site, create an
16 electronic file and assign a unique file number.

17 (B) Create a digital image of the form and deposit the image
18 into the individual's electronic file in the registry. The Secretary
19 of State is not required to review an advance health care directive
20 to determine whether it is legally valid.

21 (4) The Secretary of State shall establish confidential online
22 access to the registry for health care providers according to all of
23 the following requirements:

24 (A) The Secretary of State shall establish a separate and secure
25 nonpublic Web site for the purpose of health care provider
26 access.

27 (B) A health care provider shall apply to the Secretary of State
28 for confidential online access to the registry.

29 (C) The Secretary of State shall provide a health care provider
30 who applies for confidential online access to the registry a secure
31 user identification number, a password, and the Web site address
32 (URL) to be used for health care provider access.

33 (D) A health care provider may only be allowed online access
34 to the registry using its user identification number and password.

35 (E) A health care provider may access a patient's advanced
36 health care directive information by entering the file number on
37 the patient's Advance Health Care Directive Registry
38 identification card or by entering the patient's name and date of
39 birth on the health care provider access Web site.

1 ~~(e) Upon receiving information from a registrant, the Secretary~~
2 ~~of State shall issue to the registrant an Advance Health Care~~
3 ~~Directive Registry identification card indicating the individual's~~
4 ~~file number in the registry and that an advance health care~~
5 ~~directive, or information regarding an advance health care~~
6 ~~directive, has been deposited with the registry. Costs associated~~
7 ~~with issuance of the card shall be offset by the fee charged by the~~
8 ~~Secretary of State to receive and register information at the~~
9 ~~registry.~~

10 ~~(f) The Secretary of State, at the request of the registrant or his~~
11 ~~or her legal representative, shall transmit the information~~
12 ~~received regarding the written advance health care directive to~~
13 ~~the registry system of another jurisdiction as identified by the~~
14 ~~registrant, or his or her legal representative.~~

15 ~~(g) The Secretary of State shall charge a fee to each registrant~~
16 ~~in an amount such that, when all fees charged to registrants are~~
17 ~~aggregated, the aggregated fees do not exceed the actual cost of~~
18 ~~establishing and maintaining the registry.~~

19 ~~(h) The Secretary of State shall use the information contained~~
20 ~~in the registry only for the purposes of the registry.~~

21 ~~SEC. 3. Section 4803 of the Probate Code is amended to read:~~

22 ~~4803. (a) Failure to register with the Secretary of State does~~
23 ~~not affect the validity of any advance health care directive.~~

24 ~~(b) Registration with the Secretary of State does not do any of~~
25 ~~the following:~~

26 ~~(1) Affect the validity of any advance health care directive.~~

27 ~~(2) Certify the accuracy of information contained in the~~
28 ~~advance health care directive.~~

29 ~~(3) Create a presumption regarding the validity of the advance~~
30 ~~health care directive or the accuracy of information contained in~~
31 ~~the advance health care directive.~~